Joint Economic Committee

Representative Kevin Brady • Chairman

CHAIRMAN KEVIN BRADY

JOINT ECONOMIC COMMITTEE

JUNE 5, 2013

Reducing Unnecessary and Costly Red Tape through Smarter Regulations

This month the current recovery celebrates its fourth anniversary. Now is a good time to assess how the U.S. economy is performing.

Unfortunately for American families, the current recovery remains the weakest since World War II. There is a troubling Growth Gap in economic performance between this recovery and the average of post-war recoveries, leaving our economy four million private sector jobs and $1.2 trillion short. While Wall Street is booming, every man, woman and child in America is missing nearly $3,000 in real disposable income due to the Growth Gap.

During this Congress, the Joint Economic Committee has been examining the causes of the Growth Gap and the types of alternative policies to close that gap. The JEC has studied how current fiscal and monetary policies have held back this recovery. Today, the JEC will explore regulatory policy.

From town hall meetings with my constituents in Texas to conversations with business leaders and economists across America, there is one consistent message: Uncertainty over the costs of new regulations in healthcare, the environment, labor issues and financial services is suppressing business investment and the creation of new jobs along Main Street.

The burden of federal regulations is large. At year-end 2012, the *Code of Federal Regulations* had 238 volumes and 174,545 pages.

That burden is growing. In 2012, the *Federal Register*—which publishes proposed new rules and regulations, final rules and changes to existing regulations—totaled 78,961 pages. Three of four highest page counts since the Federal Register began publication have occurred during the Obama presidency.

And that burden is costly. NERA Economic Consulting, in a study last year commissioned by Manufacturers Alliance for Productivity and Innovation (MAPI), estimates the current direct cost of compliance with "major" regulations—those with an estimated cost greater than $100 million per year—issued between 1993 and 2011 to be between $265 billion and $726 billion per year. Clyde Wayne Crews of the Competitive Enterprise Institute estimates the total cost of regulation in America approaches $1.8 trillion annually—or nearly 12% of GDP.

Given this historically weak recovery, the rise of technology to help us meet regulatory goals more cheaply and a shared belief that America should continue progress on a clean environment and safe workplace, when regulations are necessary doesn't the public deserve the most effective regulation at the least cost?

Smart regulations that improve the market process and its incentive structure to accelerate progress rather than dictate particular outcomes will prove superior to tens of thousands of pages of mandated rules and micro-managed instructions.

Devising process-enhancing rules that engage the private sector's versatility and creativity require objective upfront analysis and thoughtful design. Yet federal agencies often do things the other way around—deciding first what they want to do and then using whatever analysis is performed to justify their preconceived "solution." This abuse must stop.

In 1981, President Reagan issued an executive order requiring executive branch agencies to conduct Regulatory Impact Analysis, commonly known as cost-benefit analysis, before issuing major new regulations. This first step toward smarter regulation had its limitations.

An executive order affects only executive branch regulatory agencies and therefore does not affect independent regulatory agencies such as the Consumer Product Safety Commission, the Federal Trade Commission, the Federal Reserve, and the Consumer Financial Protection Board.

Over the years, Congress has exempted broad swaths of federal regulation from the scrutiny of cost-benefit analysis through provisions of the *Clean Air Act,* for example. While there are government-wide "best practice" standards on how agencies should conduct cost-benefit analysis, they are not uniformly applied and are not legally binding. The quality of agency cost-benefit analyses varies greatly.

Agency bureaucrats are naturally biased toward their proposed regulation and have learned how to manipulate cost-benefit analysis to justify whatever new regulations they wish to issue. For example, former Administrator of the Office of Information and Regulatory Affairs, professor John Graham, closely examined Corporate Average Fuel Economy (CAFE) standards for trucks in his testimony before the House Committee on Oversight and Government Reform in September 2011 and found that to inflate the benefits of their new rule, regulators had cut the discount rate and the so-called "rebound effect" of increased driving with better mileage to half or less. He also found that they failed to carefully consider the rule's effects on vehicle size, performance and safety.

In other words, today too few proposed rules are fully analyzed. There are too many loopholes, no uniform requirement across all agencies, a lack of standards with which to conduct the analysis, no check-and-balance against agency bias, no comparison of past analysis to real life impacts and little recognition of the total burdens on the economy of regulation.

We must do better. The purpose of this hearing is to discover ways in which Congress can make the regulatory process "smarter", more cost effective and better designed to accomplish the goals without damaging the economy.

In particular, the Committee hopes to hear from today's witnesses about the deficiencies in cost-benefit analysis as it is now practiced and how agencies can do a better job of quantifying and measuring the costs and benefits of both proposed and existing regulations. I look forward to the testimonies.